The Algonquins of Wolf Lake, Timiskaming, Eagle Village & Barriere Lake

Presentation to

Mr. Douglas Eyford, Special Federal Representative

Regarding Canada's Interim Comprehensive Claims Policy

Montreal, Quebec

30 October 2014

Without Prejudice

Presentation by the Algonquins of Timiskaming, Wolf Lake, Eagle Village & Barriere Lake to Federal Special Representative Douglas Eyford regarding Canada's Comprehensive Claims Policy.

Montreal, Quebec, 30 October 2014

Kwe kwe Mr. Eyford,

We are pleased to be here today and we welcome you. This presentation will try to cover a lot of ground in a short time. First we will explain who we are and a bit of our history as Algonquin people. Next, we will review recent events related to Aboriginal title and rights, and our efforts to have our rights addressed. We will also provide some initial comments on Canada's discussion paper regarding the Comprehensive Claims Policy (CCP). And finally, we will explain some of our expectations in terms of policy and process which should guide our future relations, and especially the reconciliation of the respective rights and interests of our peoples.

To begin, please be advised that today's meeting does not constitute meaningful consultation. Far from it. We have had little opportunity or time to prepare, or to review Canada's document. The federal government has provided us with no funds to carry out an analysis, consult our members, or to develop a formal position. As well, recent changes to the federal policy explicitly prohibit tribal councils from engaging in "political advocacy", but leave it up to bureaucrats to define what this means. The message from the federal government seems to be that we should be seen but not heard. As a result, we are not even able to use tribal council resources to support our presence here.

The federal paper invites "informed discussion" on policy renewal and expresses the hope that it will be a basis for "respectful and constructive dialogue". We welcome this, but if Canada is serious about consulting us on a renewed CCP, then it will need to provide adequate resources and adequate time, and also to recognize our right to organize and speak as we see fit on issues that affect us.

So for all of these reasons, we must tell you that this meeting is an information session only and without prejudice to our rights and interests. We do have some preliminary comments which we would like to share with you, and we look forward to authentic consultation in the near future if the government of Canada is prepared to be serious about engaging with us.

Who we are

We represent the Algonquins of Timiskaming, Wolf Lake, Eagle Village and Barriere Lake. Our communities are part of the Algonquin nation, whose traditional territory includes the entire Ottawa River watershed (see attachment 1: Map showing Algonquin nation territory circa 1850). As you can see from the map, Algonquin territory straddles what is now the provincial boundary between Ontario and Quebec. The imposition of this boundary has had a dramatic impact on our communities, one that continues to today.

At present, there are ten federally recognized Algonquin communities, with a total population of approximately 8-10,000. Nine of these Algonquin communities are located in Quebec. Proceeding from northwest to southeast, these are the Abitibiwinni, Timiskaming, Eagle Village (Kebaowek), Wolf Lake, Long Point (Winneway), Kitcisakik (Grand Lac), Lac Simon, Mitcikinabik Inik (Algonquins of Barriere Lake) and Kitigan Zibi (River Desert). In Ontario, members of the Algonquins of Pikwakanagan (at Golden Lake) make up the only recognized Algonquin community, though three other Ontario First Nation communities, Wahgoshig, Matachewan and Temagami, are of at least partially Algonquin descent. (See attachment 2: Map showing Aboriginal communities in the Ottawa River watershed.)

We live in a complex matrix of overlapping interests. The Ontario-Quebec border cuts through Algonquin territory; to the north in Quebec is the James Bay Northern Quebec Agreement territory; on the Ontario side our territories adjoin the territory of the Robinson Huron Treaty of 1850 and Treaty 9 of 1905-08. To the south the so-called “Algonquins of Ontario” comprehensive claim is at the draft AIP stage after more than 20 years of negotiations. To the north east the Attikamekw are in their fourth decade of CCP negotiations. And to the southeast are the Mohawk Councils at Kahnesatake, Kahnawake and Akwesasne.

Barriere Lake, Wolf Lake, Timiskaming and Eagle Village are descended from the Algonquin Bands who traditionally used and occupied the territory where we still live. Our members can trace their ancestry and continued use and occupation of this territory back to time immemorial. Barriere Lake’s traditional territory is wholly within the province of Quebec. Timiskaming, Eagle Village and Wolf Lake’s traditional territories straddle the Ontario-Quebec border. Our language, customs and traditions are a big part of what defines us as a people. We have names, in our own language, for all of the lakes, rivers, mountains, and features of our respective territories. These names have been in use since time immemorial and they are proof of our long relationship with the land.

Our communities are all recognized as "Bands" within the meaning of the Indian Act, and come within the meaning of "Indian peoples" in section 35 of the *Constitution Act, 1982*. We have never entered into a land cession treaty surrendering our Aboriginal rights and title; nor have we authorized any other nation or entity to negotiate on our behalf for such title and rights.

Therefore, our Aboriginal rights and title have never been extinguished and exist to this present day.

Aboriginal Title, Treaties and Alliance

Our ancestors were traditionally allied to the French and we played an important role in their struggle with the English because we controlled the Ottawa River, which was a strategic transport corridor between the St Lawrence and the upper Great Lakes. Beginning in 1760 the Algonquins entered into a number of treaties with Great Britain: at Swegatchy and Kahnawake in 1760, and at Niagara in 1764. They were not land surrender treaties: these agreements assured the British of our alliance, and in turn the British promised, among other things, to respect and protect our Aboriginal title and rights. In addition, the Royal Proclamation of 1763 applies to our traditional territory: it guaranteed that our lands would be protected from encroachment, and that they would only be shared with settlers if and when we had provided our free and informed consent through treaty. Algonquin Chiefs were given copies of the Royal Proclamation by Sir William Johnson in 1763-64.

Unfortunately, despite these commitments, the British Crown, and later the Canadian government, took our lands by force, without our consent, and without any compensation. Sixty years after the Royal Proclamation of 1763 had been given to them, our Chiefs still had their original copies, which they presented to government along with petitions for protection of their lands and just compensation. Instead of dealing with them honestly, government ignored its commitments and continued to take the land without treaty and without consent. Our people suffered greatly as a result, even as those around them became rich from the furs, timber, minerals and other resources.

Recent Events and Alternative Approaches

Two hundred and fifty years after the Treaty of Niagara, our people are still waiting for a just settlement with Canada, while we continue to be excluded from equitable benefit of the economic and social life of our region. Despite being surrounded by their own Aboriginal title lands, three out of the nine Algonquin communities in Quebec don't even have federal reserve lands of their own, while other communities do not have enough land to meet their growing housing needs.

Since the advent of section 35 of the *Constitution Act, 1982*, the contradictions have been mounting. Despite the fact that section 35 "recognizes and affirms" our Aboriginal and treaty rights, successive federal and provincial governments have produced a series of policy and negotiation frameworks which discount or ignore those rights, but which also require their extinguishment. In contrast, Canada's courts have issued a series of judgements which serve to confirm and lay out the nature and scope of Aboriginal & treaty rights, and the tests required

to prove them.

At the same time, the *United Nations Declaration on the Rights of Indigenous Peoples* has contributed to standard-setting with respect to Aboriginal rights and key principles such as free and informed consent.

Unfortunately, with each positive court decision or development on the international stage, the federal government seems to move it's policy further away, deeper into denial and avoidance. This was clear after the Supreme Court of Canada ruled in *Delgamuukw* in 1997. Following this decision, the federal government refused to amend the CCP, despite the fact that the policy and process were at odds with the legal reality described by the court. For your information we have included a legal opinion that was commissioned post-*Delgammukw,* which enumerates, in significant detail, the ways in which the CCP fails to conform to the law. (See attachment 3, Mark Stevenson & Albert Peeling, *Review of Canada's Comprehensive Land Claims Policy* (prepared for the Delgamuukw Strategic Implementation Committee, Assembly of First Nations. Released 15 February 2002.)) We believe that the conclusions of this analysis still hold true.

With subsequent court decisions, in particular *Haida* and *Tsilhqot'in*, the disconnect between federal policy & practise on the one hand, and the law on the other, has become even more glaring. In particular, while the courts have acknowledged the need for policy and process that covers the spectrum from asserted rights through to final negotiated agreements, including the need to consult and accommodate in the interim, federal policy has failed to provide practical measures to address these realities.

Our communities have made a best effort at addressing these contradictions, and engaging the federal and provincial Crowns to ensure that our rights and interests are recognized and affirmed. These efforts provide some alternative approaches which, it seems to us, fall under the category of "non-treaty agreements" contained in the federal discussion paper. We would like to provide you with these examples.

<u>Barriere Lake Trilateral Agreement</u>

In the early 1990s, the Algonquins of Barriere Lake entered into a Trilateral Agreement with Canada and Quebec, with the shared objective of developing an integrated resource management plan that would protect their way of life while also enabling resource development to take place in a sustainable manner, but outside the CCP. Canada walked away from that agreement, partly because it took the position that the process was an effort to avoid the CCP. Today, the Algonquins of Barriere Lake (ABL) continue to pursue these objectives bilaterally with Quebec, but the federal government is absent. The Trilateral Agreement Territory (TAT) was recognized by Canada and Quebec, and encompasses, in

general terms, the area over which ABL asserts Aboriginal title. (See Attachment 4, Map showing location of Grand Lac Victoria Beaver preserve, La Verendrye park and Trilateral Agreement territory (Arbex February 2007); and attachment 5, Map showing ABL Current Use and TAT (Arbex February 2007)).

Timiskaming, Wolf Lake & Eagle Village Statement of Asserted Rights

In January 2013, Timiskaming (TFN), Wolf Lake (WLFN) and Eagle Village (EVFN) presented Canada, Quebec and Ontario with a Statement of Asserted Aboriginal Rights & Title (SAR), in part to address the gaps in federal policy related to consultation and interim measures prior to treaty negotiations. As explained in that document:

> The purpose of this Statement is to set-out the evidence to support WLFN, TFN and EVFN in their efforts to engage the honour of the Crown and its duty to consult them and accommodate their interests in matters affecting their traditional territories. It is intended to engage Canada's obligations under domestic law (Constitution Act, 1982, s. 35 and the Haida case) and international law, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which requires free prior and informed consent before any development activities within the traditional territories of Indigenous Peoples.
>
> This Statement is provided as an interim step prior to the completion of formal Statements of Claim from TFN, WLFN and EVFN, and is provided at this time to give the Crown formal notice of their asserted Aboriginal rights and title. [...] Although this Statement is only a summary of the evidence, it is intended to provide enough evidence to trigger the Crown's duty and to establish that the scope of that duty is at the high end because of the strength of the claim.[1]

The package that went with the SAR included extensive documentary evidence to substantiate the assertions made. It also included a map showing the geographic extent of the area over which the three communities assert Aboriginal title and rights (see attachment 6, Timiskaming, Wolf Lake and Eagle Village: Asserted Aboriginal Rights area (January 2013)).

Canada has been unprepared to address the SAR in any meaningful way. It has refused to engage the communities substantively with respect to consultation, and instead has insisted that the only way for these matters to be addressed is for Eagle Village, Wolf Lake and Timiskaming submit their comprehensive claims to Canada for review; but that even then, nothing will be done until all of the nine 'Quebec Algonquin' communities submit claims. Canada has refused to act on the strength of evidence provided to it in the SAR.

[1] Statement of Asserted Aboriginal Rights & Title: Timiskaming, Wolf Lake & Eagle Village, Jan 2013: p. 2

Although, as we will see below, the federal discussion paper identifies the "negotiation of non-treaty options" as a possibility, and suggests that "non-treaty approaches can be an effective way to address Section 35 Aboriginal rights", we have not seen any indication that federal officials are actually prepared to entertain these alternatives. In fact, Barriere Lake's experience with the Trilateral Agreement and the experience of Timiskaming, Wolf Lake and Eagle Village with the SAR, suggests that federal officials are unwilling to consider practical alternatives to the CCP, even when confronted with significant strength of evidence.

Comments on the Federal Discussion Paper

Over the last decades, we have, through the Algonquin Nation Secretariat, participated in more than one effort to have the CCP revised. Each time we have seen the federal government avoid the fundamental change that is needed to ensure that the CCP conforms to domestic law and international standards. Instead, Canada has opted to maintain the status quo, which is based on the extinguishment of our rights and the continued poverty of our people.

Given this history, it should come as no surprise that we may be sceptical of current federal offers to renew and reform the CCP. The federal government seems content to tinker with the process, but appears unwilling to fundamentally change its policy to catch up to the law and international standards. Regardless, we are here today to make our representations to you in the hope that perhaps this time might be different. And if not, then our views will be on the record, and we will join previous leaders of our nation who have consistently asked the Crown to do the right thing.

We have received a copy of a federal discussion paper entitled "Renewing the Comprehensive Land Claims Policy: Towards a Framework for Addressing Section 35 Aboriginal Rights", dated September 2014. We understand that today's meeting with federal representatives is to enable us to hear more about this interim policy, and to provide our initial comments.

We can tell you that the members of Timiskaming, Barriere Lake and Wolf Lake, meeting in assembly on September 17, 2014, rejected this interim policy (see attachment 7, ANS Resolution 2014-07). We can also tell you that the Assembly of First Nations of Quebec and Labrador has rejected this document.

In this connection we need to mention of the "Principles Respecting the Recognition and Reconciliation of Section 35 Rights" which is referred to in Canada's discussion paper, and which is described as being "jointly developed by the Crown and First Nation leaders, with the support of the Assembly of First Nations, through the Senior Oversight Committee on Comprehensive Claims". Despite our best efforts, we were excluded from participation in that process and therefore those principles do not reflect our views or our realities. Our communities are not alone in this situation. Moreover, these principles were never ratified by

the Chiefs in Assembly or the AFN Chiefs CCP Working Group. So we do not believe that it is appropriate to point to those principles as being representative of First Nation views, or to suggest that the outcomes of the Senior Oversight Committee on Comprehensive Claims were reflective of authentic joint development.

We must emphasize to you is that if Canada is serious about consulting on the CCP then it needs to engage directly with the rights-holders. Organizations like the Assembly of First Nations are not equipped or mandated to address matters arising from our rights and title.

The federal discussion paper on renewing the CCP does not appear to represent any departure from the status quo, or to provide any substantive response to the significant changes to the legal landscape brought about by *Delgamuukw, Haida,* or *Tsilhqot'in*. Rather, it reflects the same failed policy approach that has mitigated against successful reconciliation between our peoples up to now.

Following are some preliminary comments under specific headings:

Certainty
Nothing new here, but continued emphasis on legal "techniques" to obtain effective extinguishment, without meaningful recognition or affirmation of rights.

Lands
Although it is not stated in the discussion paper, we understand that Canada refuses to provide Reserve lands within the meaning of Section 91(24) of the *BNA Act, 1867* as part of a treaty agreement. If this is the case it should be stated clearly, and if not, then it should be explicit about the retention of 91(24) lands.

Shared Territories and Overlapping Claims
Our communities have spent considerable time and effort to document their territorial interests, as well as potential overlaps with neighbouring communities. Canada has so far refused to engage us seriously on this issue despite our best efforts, and in fact continues to negotiate with the "Algonquins of Ontario" (AOO) over lands that we use and occupy, and over which we have asserted Aboriginal title. We are currently engaged in protracted discussions with federal officials to try and obtain a substantive consultation process to address our concerns about the impact of the AOO claim on the asserted rights of Timiskaming, Eagle Village and Wolf Lake. We continue to meet resistance.

Trans-Boundary Claims
After many years of explaining who we are, and despite the facts, we are still confronted by a federal government that insists we are 'Quebec Algonquins'. Federal infatuation with the AOO claim at the expense of considering the interests of other adjacent Algonquin communities is

an example of this. The federal approach is contrary to reality. Substantial portions of Timiskaming, Wolf Lake and Eagle Village traditional territory lie in both Ontario and Quebec. Our members go to school, hunt, fish, work, and live in both provinces. Canada needs to recognize this reality and support our efforts to resolve issues arising from the imposition of the provincial border on our traditional territories.

Loan Funding
The discussion paper is silent on the matter of loan funding other than to say that outstanding loans must be paid, but we understand it remains the policy of Canada that it will only enter into negotiations on the basis of loans. Experience has shown that gives unfair advantage to Canada as negotiations drag on and First Nations become mired in debt through no fault of their own. If loan funding is no longer Canada's policy, then it should be stated in this discussion paper.

Federal Jurisdiction
We understand that Canada requires treaty beneficiaries to give up the federal character of their core lands, and we ask why this is part of the price our communities are asked to pay for resolving the land question.

Silence on Key Irritants
Overall, it seems that in drafting the federal discussion paper, a decision was made to avoid explicit mention of the some of the most objectionable aspects of the policy. Some examples include (and there others as well):

- taxation
- loss of reserve lands & reduction of s. 91(24) federal responsibility
- no compensation for prior infringement
- loan funding

Given the contention surrounding these aspects of current policy and practise, and the need for frank discussion, we find this avoidance to be troubling. If the government of Canada wants a forthright dialogue, then it should be explicit about whether these significant barriers to reconciliation remain part of the CCP, or whether there is an opportunity to discuss alternative approaches.

Beneficiaries
We are very concerned at the federal approach to beneficiaries in the AOO claim, which gives standing to individuals and groups who may not meet the legal requirements as title holders. As a result we may find that non-title holders are provided with an opportunity to extinguish Algonquin title and rights to territory over which we assert Aboriginal title. Despite the fact that we have advised Canada of our concerns, and provided the federal government with a

clear indication of the territory over which we assert title and rights, as well as the overlaps with the AOO claim, we have received no substantive response or engagement on this matter.

Compensation
The *Delgamuukw* decision speaks about the requirement for compensation when lands and resources have been taken without consent or justification. Despite this direction from the courts, Canada's CCP continues to avoid the matter of compensation. For Algonquin territory, where the minerals and timber have been largely taken out already, this is a significant issue.

Aggregation of Aboriginal Groups
Experience shows that the federal government is arbitrary when it comes time to decide who to deal with in negotiations. For instance, Canada is negotiating the AOO claim solely with the Algonquins of Pikwakanagan and an assortment of non-status groups. Canada has so far refused to engage Timiskaming, Wolf Lake and Eagle Village with respect to our asserted interests in the AOO territory. At the same time, in BC there are many negotiations taking place with individual First Nations/Bands.

On the other hand, when Timiskaming, Eagle Village and Wolf Lake transmitted the SAR to Canada, the federal response was that we were not a large enough aggregate, even though our communities are contiguous and we share close common history and kinship.

Federal officials have refused to act on evidence presented in the SAR which demonstrates that within the Algonquin nation Aboriginal title is held at the band/community level, or its application to our assertion of rights. We were told: submit your claim, wait until the other six 'Quebec Algonquin' communities submit their claims, and, whenever that happens, Canada will then decide how it will approach the claim globally with all of the 'Quebec Algonquins'. But federal officials have been unable or unwilling to offer any substantive interim measures that would address our assertion of rights in the meantime.

There may be some issues (for instance membership / beneficiaries) which are appropriate to discuss at aggregate levels, but what those aggregate levels should be needs to be informed by the customs and traditions of the nation, and be accountable to the rights-holders. It is not appropriate for the federal government to interfere in our internal affairs and dictate these matters. Canada will need to show flexibility on this issue if it is to be successful in negotiations.

Reconciliation measures outside of the treaty process/Negotiation of Non-Treaty agreements

This approach provides some interesting possibilities and deserves further exploration, particularly on an interim basis until such time as the broader issues of CCP reform are dealt with. But, as explained above, we do not see any willingness on Canada's part to actually

support this type of effort in our territory. If Canada is truly serious about reconciliation measures outside of a treaty process, then it can start by engaging with our communities on the SAR and the Trilateral Agreement.

We continue to be troubled by the fact that Canada refuses to adequately address the rights and interests of our communities in connection with consultation. For example, recently Timiskaming, Eagle Village and Wolf Lake have been dealing with the Department of Public Works and Government Services Canada with respect to the refurbishment of the dams at Temiscaming and Latchford, but that federal department steadfastly refuses to engage in meaningful consultation by refusing to address Aboriginal rights and title on the affected lands as a central issue.

Until the CCP is amended to recognize and affirm our rights in a way that provides equitable, ongoing benefit and protection to our people and our lands, there will be a continuing need for meaningful and effective interim reconciliation measures. We look forward to have a chance to pursue these alternatives with Canada, as well as longer term solutions, if Canada demonstrates the will. The status quo is not tenable.

Megwetch,

Chief Harry St Denis, Wolf Lake
Chief Terence McBride, Timiskaming
Chief Madeleine Paul, Eagle Village
Chief Casey Ratt, Barriere Lake

Attachments

1. Map showing Algonquin nation territory circa 1850 (prepared by PlanLab for the Algonquin Nation Secretariat, 14 February 2012)
2. Map showing Aboriginal communities in the Ottawa River watershed (prepared by PlanLab for the Algonquin Nation Secretariat, March 2014)
3. Mark Stevenson & Albert Peeling, *Review of Canada's Comprehensive Land Claims Policy* (prepared for the Delgamuukw Strategic Implementation Committee, Assembly of First Nations. Released 15 February 2002.)
4. Map showing location of Grand Lac Victoria Beaver preserve, La Verendrye Park and Trilateral Agreement Territory (Arbex February 2007)
5. Map showing ABL Current Use and TAT (Arbex February 2007)
6. Timiskaming, Wolf Lake and Eagle Village: Asserted Aboriginal Rights area (January 2013)
7. ANS AGA resolution 2014-7 re: federal interim CCP

ANPSS/ANS Annual General Assembly
Wednesday, September 17, 2014 – Laniel, Algonquin Territory
Resolution # 2014-07

RE: Rejection of Federal "Interim" Policy Entitled "*Renewing the Comprehensive Land Claims Policy: Towards a Framework for Addressing Section 35 Aboriginal Rights*"

Whereas the federal government has introduced an "interim" policy entitled "*Renewing the Comprehensive Land Claims Policy: Towards a Framework for Addressing Section 35 Aboriginal Rights*"; and

Whereas the federal Minister of Aboriginal Affairs, Bernard Valcourt, has requested submissions from the public and First Nations to comment on the "interim" policy; and

Therefore Be It Resolved that the Members of the Algonquin Nation Tribal Council's 34th Annual General Assembly call on our Chiefs to communicate our rejection of the "*Renewing the Comprehensive Land Claims Policy: Towards a Framework for Addressing Section 35 Aboriginal Rights*" interim policy and demand a new policy framework recognizing and affirming our Algonquin Aboriginal Title and Rights in accordance with the Supreme Court of Canada's Tsilhqot'in decision and the Articles of the **United Nations Declaration on the Rights of Indigenous Peoples'**.

Moved By: Dianna Wabie, TFN
Seconded By: Randy Polson, TFN
Status: Adopted by Consensus

Wednesday, September 17, 2104

Secretary

Treasurer